

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

: \_\_\_\_\_ :

THE UNITED STATES OF AMERICA, :  
Plaintiff, :

vs. : Case No: 12-626 DRD;

[2] MARCIANO OLIVO-ROSA, :  
Defendant. :

: \_\_\_\_\_ :

THE UNITED STATES OF AMERICA, :  
Plaintiff, :

vs. : Case No: 13-095 ADC

[3] MARCIANO OLIVO-ROSA, :  
Defendant. :

: \_\_\_\_\_ :

TRANSCRIPT OF SENTENCING HEARING  
HELD BEFORE THE HONORABLE DANIEL R. DOMÍNGUEZ  
JOSÉ V. TOLEDO U.S. COURTHOUSE, OLD SAN JUAN, PUERTO RICO  
FRIDAY, NOVEMBER 14, 2014, BEGINNING AT 10:53 A.M.

: \_\_\_\_\_ :

A P P E A R A N C E S:

For the United States of America:

Assistant U.S. Attorney Nicholas Cannon

For the Defendant:

Attorney Victor M. Chico-Luna

ALSO PRESENT:

Ana Romero, Courtroom Deputy Clerk

Thomas Kavelin, Spanish Interpreter

Sentencing Hearing - Marciano Olivo-Rosa

1 THE BAILIFF: All rise.

2 (The Court enters the room.)

3 THE COURTROOM DEPUTY: The United States  
4 District Court for the District of Puerto Rico is now  
5 in session. All those having business before this  
6 Court shall draw near, give your attention and you  
7 shall be heard. God save the United States of  
8 America and this Honorable Court. Honorable  
9 Daniel R. Domínguez presiding.

10 THE BAILIFF: You may be seated.

11 THE COURT: Please call the case of  
12 Mr. Marciano Olivo.

13 THE COURTROOM DEPUTY: United States of  
14 America versus Marciano Olivo-Rosa. Criminal case  
15 No. 12-626; criminal case No. 13-95. Sentencing  
16 hearing. On behalf of the government, AUSA Nicholas  
17 Cannon substituting for Luke Cass. On behalf of  
18 defendant, Attorney Victor Chico. Defendant is  
19 present and will be assisted by the official court  
20 interpreter.

21 MR. CANNON: Good morning, Your Honor. The  
22 government is ready to proceed.

23 MR. CHICO-LUNA: Good morning, Your Honor  
24 the defense is ready to proceed. We're just putting  
25 on the headphones for Mr. Marciano.

## Sentencing Hearing - Marciano Olivo-Rosa

1 THE COURT: Okay, let's check them out to  
2 make sure that...

3 MR. CHICO-LUNA: It's working, Your Honor.

4 THE COURT: Counsel, Mr. Chico-Luna, sir,  
5 good morning.

6 MR. CHICO-LUNA: Good morning.

7 THE COURT: Has the presentence report been  
8 duly translated? By "duly translated" the Court  
9 means has the presentence report been translated  
10 verbatim and explained to the defendant in these two  
11 cases?

12 MR. CHICO-LUNA: Yes, Your Honor.

13 THE COURT: Sir, your lawyer -- Mr. Marciano  
14 Olivo-Rosa, your lawyer has just advised the Court  
15 that he has duly translated and explained the  
16 presentence report to you. Is he making a correct  
17 representation?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Now, this is a plea  
20 wherein -- pursuant to the plea, wherein the Court  
21 notices that the defendant has been duly advised that  
22 he could be sentenced up to 20 years; is that  
23 correct?

24 MR. CHICO-LUNA: That is the range, yes,  
25 Your Honor.

## Sentencing Hearing - Marciano Olivo-Rosa

1 THE COURT: So, there is no special notice  
2 required by the Court because, since the very  
3 beginning, he knows that that could be the range.

4 MR. CHICO-LUNA: Yes, Your Honor.

5 THE COURT: All right. The Court has  
6 reviewed your request in this case and is aware of  
7 what you have requested and the reasons therefore.  
8 So, you don't have to repeat that, but the Court does  
9 not want to gag you in any way relating to the  
10 potential sentence in this case. So you may proceed.

11 MR. CHICO-LUNA: Yes, Your Honor. Your  
12 Honor, briefly, I know the Court is aware of the  
13 sentencing memo that was filed; however, the  
14 government did file a sentencing memo requesting the  
15 upper end of 20 years, and I would like to address  
16 that for a few minutes.

17 THE COURT: You may.

18 MR. CHICO-LUNA: First of all, the  
19 government says that Mr. Marciano's upbringing is no  
20 excuse, and I am aware of that. There is no excuse  
21 for criminal conduct; however, it explains, Your  
22 Honor, because he was brought up in an environment --  
23 his father was an alcoholic, a cocaine user; his  
24 mother from an early age did not take care of him.  
25 He was raised by his paternal aunts, which are here

## Sentencing Hearing - Marciano Olivo-Rosa

1 today. And his sister was mentally ill, she stabbed  
2 him at one point.

3 And these are all things that -- I'm sure  
4 Mr. Marciano was not born with a sign on his forehead  
5 that said that he was going to commit robberies when  
6 he was older, but these are things that change a  
7 young man and change a man, and we have to take that  
8 into account as to his upbringing.

9 These robberies occurred within a four-month  
10 period, that was when Marciano he was working, I  
11 believe, in Econo. He had a child already and he had  
12 another one on its way, so he was desperate. Of the  
13 four robberies, two of them he did go into the stores  
14 and actually robbed the employees; the other two he  
15 was merely -- participated as an aider and abettor.  
16 He had his car and he used his car for those, helping  
17 out the other people.

18 THE COURT: But he knew that they were  
19 armed?

20 MR. CHICO-LUNA: Yes, yes, he knew, Your  
21 Honor. We're not denying that.

22 THE COURT: He knew that they were armed,  
23 and he knew that tragically could occur.

24 MR. CHICO-LUNA: That's true, Your Honor.  
25 But another issue that I want to address, the

## Sentencing Hearing - Marciano Olivo-Rosa

1 government requested 20 years, but we have to also  
2 take into account the disparity of the sentences,  
3 Your Honor.

4 THE COURT: No, no, no. Why is there a  
5 disparity of sentences in this case?

6 MR. CHICO-LUNA: Your Honor, at least if we  
7 review the docket, the other co --

8 THE COURT: But the other defendant wasn't  
9 charged with three other robberies.

10 MR. CHICO-LUNA: True, Your Honor, but David  
11 Domenech, No. 1, was charged with three robberies and  
12 he got seven years' recommendation; and he was the  
13 shooter in the -- the one who shot the police officer  
14 during his get-away.

15 THE COURT: But he's serving 99 years.

16 MR. CHICO-LUNA: In state court, Your Honor,  
17 but I'm talking about --

18 THE COURT: But he's serving 99 years.

19 MR. CHICO-LUNA: And Mr. Alexis Arroyo, who  
20 was at that robbery also, he plead and his  
21 recommendation is for seven years. So, I believe the  
22 Court should take that into account.

23 THE COURT: But that one is not in three  
24 other robberies.

25 MR. CHICO-LUNA: True, Your Honor, he's only

## Sentencing Hearing - Marciano Olivo-Rosa

1 in one.

2 THE COURT: He's only in one, okay.

3 MR. CHICO-LUNA: But the sentence that the  
4 government is requesting is basically triple of what  
5 the other gentlemen got, Your Honor; so I believe --

6 THE COURT: Yeah, but --

7 MR. CHICO-LUNA: -- the lower end of the  
8 plea is sufficient but not greater than necessary.  
9 And that would be my only request to the Court.

10 THE COURT: Let's review that carefully.  
11 There's one gentleman that is serving 99 years and  
12 was the shooter and the causer of the death of a  
13 policeman.

14 MR. CHICO-LUNA: That is correct.

15 THE COURT: That other gentleman is not only  
16 serving 99 years -- how many cases of robberies did  
17 he have?

18 MR. CHICO-LUNA: He participated in three  
19 robberies, Your Honor.

20 THE COURT: But not four.

21 MR. CHICO-LUNA: Not four.

22 THE COURT: And plus he was the shooter  
23 of --

24 MR. CHICO-LUNA: The police officer.

25 THE COURT: -- the police officer and he's

## Sentencing Hearing - Marciano Olivo-Rosa

1 serving 99 years under the new law, so he's going to  
2 serve 99 years apparently pursuant to law. He's  
3 going to serve 99 years.

4 MR. CHICO-LUNA: I believe so, Your Honor,  
5 but I'm not up-to-date on the criminal state law.

6 THE COURT: All right. And the gentleman  
7 that got seven years participated in only one  
8 robbery, not four.

9 MR. CHICO-LUNA: In the one robbery that the  
10 police officer was shot.

11 THE COURT: And precisely in the robbery.

12 MR. CHICO-LUNA: Yes.

13 THE COURT: Wow. Okay, very well. United  
14 States.

15 MR. CANNON: Yes, Your Honor, and I won't  
16 repeat what Mr. Cass has said in his sentencing  
17 memorandum. The government does believe that  
18 20 years serves the purposes of taking into account  
19 the violent nature of these offenses, which  
20 ultimately led to the death of Officer Ivan Matos,  
21 but it also then does what defense counsel's  
22 concerned with; it does take into account this  
23 particular defendant's role in this offense.

24 But most importantly, Your Honor, that  
25 sentence of 20 years serves to protect the community



## Sentencing Hearing - Marciano Olivo-Rosa

1 from future crimes. This is not a singular incident  
2 that the defendant participated in, and that's the  
3 basis for the government's recommendation of  
4 20 years.

5 I would just -- I wanted to note two things  
6 also for the record. I believe that Your Honor had  
7 said that the defendant faces 20 years; that's the  
8 government's recommendation, there's no doubt about  
9 it. The plea agreement is for 15 to 20, but it is a  
10 Type (B) plea. He does face obviously for the 924(c)  
11 up to life imprisonment. I just want the record to  
12 be clear so that he can be advised of that.

13 THE COURT: Yes, I know. But the plea  
14 contemplates, when he signed the plea and he agreed  
15 to the plea, he was -- notwithstanding that there is  
16 a maximum of up to life, which the Court can provide  
17 to him, but of course I'm not thinking of a life  
18 sentence for this gentleman --

19 MR. CANNON: No, no. It was just for  
20 purposes of clearing the record up, Your Honor. And  
21 our recommendation is obviously the 20 years.

22 THE COURT: But when he signed the plea,  
23 when he put his signature there and he put the  
24 initials there, there is a page in that plea  
25 agreement that says that this plea agreement for him

## Sentencing Hearing - Marciano Olivo-Rosa

1 is reasonable between 15 and 20.

2 MR. CHICO-LUNA: Yes, sir.

3 MR. CANNON: Yes, Your Honor. And one other  
4 just minor correction, Your Honor. On page 100 --  
5 paragraph 188 --

6 THE COURT: 188 of the presentence report?

7 MR. CANNON: Yeah. It mentions that the  
8 defendant is subject to a mandatory consecutive  
9 statutory minimum of 60 months, and that's just -- it  
10 should have been 84. It says 84 at several --

11 THE COURT: It is 84 because there was a  
12 brandishing.

13 MR. CANNON: Yes, Your Honor. It says 84 in  
14 several other places in the PSR, it was merely a  
15 typo.

16 THE COURT: Okay, so that has to be  
17 corrected.

18 MR. CANNON: Yes.

19 THE COURT: Do you disagree or you agree?

20 MR. CHICO-LUNA: No, Your Honor.

21 THE COURT: I'm talking about the 84 months.

22 MR. CHICO-LUNA: Yes. For the gun count.

23 THE COURT: For the brandishing is 84; 7  
24 times 12 is 84. All right, so that should be changed  
25 at 188.

## Sentencing Hearing - Marciano Olivo-Rosa

1 I will hear the allocution from the  
2 defendant.

3 (Defendant allocutes by reading a letter in  
4 Spanish.)

5 THE INTERPRETER: Does the Court wish to  
6 have this translated, Your Honor?

7 THE COURT: Yes, please. Thank you.

8 THE INTERPRETER: Good morning. To this  
9 Honorable Court and to all the personnel, attorneys,  
10 prosecutors, and finally, Your Honor.

11 Today is a historic day in my life and that  
12 of my family because, after two years of an internal  
13 struggle, I have been able to see the light at the  
14 end of the tunnel. It has been a difficult process  
15 both for me and for my family.

16 During this process in my case, Your Honor,  
17 I have been able to understand that we men must  
18 assume responsibility in life. You were fair when  
19 you changed my attorney understanding what I had  
20 said, for which I am repentant and I assume my  
21 responsibility.

22 I ask that you have consideration regarding  
23 my sentence since I accept my acts and I am speaking  
24 to you honestly and sincerely. I have always been a  
25 hard, struggling person and hardworking. I worked

## Sentencing Hearing - Marciano Olivo-Rosa

1 for many years at the BK, at Pep Boys, Econo; I've  
2 always been a hardworking person. I believe in men  
3 who work and honor the country, the fatherland with  
4 their sweat.

5 Unfortunately, life struck me a blow and  
6 trapped me, Your Honor, and I ask this respectable  
7 Court to have clemency on my destiny, which is  
8 difficult to accept but that hopefully will be fair.

9 And, Your Honor, Judge Domínguez, I  
10 reiterate once again my gratitude to this Court. And  
11 I hope some day, if life gives me the opportunity to  
12 find myself in front of you, that it will be under  
13 other circumstances. And that I can serve you and  
14 your family and all the people present here as a  
15 citizen -- as I am fair, honest, transparent -- for  
16 the good of humanity, my two children, and my  
17 respectable family of which I request forgiveness for  
18 not having been perfect, as they would have liked. I  
19 apologize to all the victims who in one way or  
20 another I caused harm to.

21 Thank you once again. And may God be with  
22 all of us. And may we all continue forward to  
23 improve our hearts and our country. Thank you and  
24 good afternoon.

25 (Off-the-record sidebar discussion held with

## Sentencing Hearing - Marciano Olivo-Rosa

1 probation officer.)

2 THE COURT: United States, is the victim  
3 here?

4 MR. CANNON: Your Honor, the victim's wife,  
5 we believe, was going to be present today; but she --  
6 she did not show up. And we actually tried to  
7 contact her yesterday and we lost contact with her  
8 essentially.

9 THE COURT: But the --

10 MR. CANNON: We discussed it, Your Honor.  
11 We don't think, based on -- I spoke with the special  
12 agent involved -- that based on this defendant's role  
13 and the fact that she had been present at plenty of  
14 the other hearings that it was necessary to delay the  
15 proceedings. We tried her several times today.

16 THE COURT: I know. And the Court notes  
17 that I think that -- you correct me -- that we once  
18 postponed this case, did we not, for the victim to  
19 arrive and she didn't show up? Right?

20 MR. CANNON: I'm not sure if that's the case  
21 for this.

22 MR. CHICO-LUNA: If I may clarify, Your  
23 Honor. We postponed it. It's not that she didn't  
24 arrive; she was notified late and she was in Boston,  
25 outside of Puerto Rico. That's why she wasn't here.

## Sentencing Hearing - Marciano Olivo-Rosa

1 THE COURT: Okay, but--

2 MR. CHICO-LUNA: But she was notified that  
3 it was changed for today because -- so she could be  
4 present.

5 THE COURT: Okay, very well.

6 Is there any reason why the Court should not  
7 pronounce sentence at this time? United States?

8 MR. CANNON: No, Your Honor.

9 MR. CHICO-LUNA: Not from the defense, Your  
10 Honor.

11 THE COURT: Okay. On June 23, 2014, the  
12 defendant, Marciano Olivo-Rosa, plead guilty to  
13 Count 1 of the indictment in criminal case No. 12-626  
14 which charges a violation of Title 18, U.S.C.,  
15 Section 1951. That is interference of commerce by  
16 robbery, a Class C Felony. And Counts 1, 3, 4, and 5  
17 of the superseding indictment in criminal case  
18 No. 13-095, which charges three further violations of  
19 Title 18, U.S.C., Section 1951. That is interference  
20 of commerce by robbery; and a violation of Title 18,  
21 U.S.C., Section 924(c)(1)(A)(ii), that is, use and  
22 brandishing a firearm during and in relation to a  
23 crime of violence, Class C and Class A felonies  
24 respectively.

25 The November 1, 2013, edition of the United

## Sentencing Hearing - Marciano Olivo-Rosa

1 States Sentencing Guidelines has been used to apply  
2 the advisory guidelines adjustments pursuant to the  
3 provisions of Guideline Sections 1B1.11(a). Pursuant  
4 to the Guideline Section 3D1.4, Count 1 of the  
5 indictment in criminal case No. 12-626, and Counts 1,  
6 3, and 5 of the indictment in criminal 13-095 are  
7 treated as separate groups for purposes of  
8 determining the combined offense level.

9 As reflected in the guideline calculations  
10 included at the presentence report, a combined  
11 offense level of 33 has been established. As  
12 Defendant has accepted responsibility for his  
13 participation in the offense, three levels were  
14 deducted pursuant to United States Guidelines  
15 3E1.1(a) and (b).

16 Based on a total offense level of 30 and a  
17 criminal history category of I, the guideline  
18 imprisonment range for this offense is from 97 to  
19 121; with a fine range of 15,000 to 250,000; plus a  
20 supervised release of at least one but not more than  
21 three [3] years as to Count No. 1 in Criminal 12-626,  
22 and Counts 1, 3, 5 in Criminal 13-095.

23 As to Count 4 in Criminal 13-095, pursuant  
24 to Guideline Section 2K2.4(b), Chapters 3 and 4 shall  
25 not apply as to Title 18, U.S.C., 924(c)(1)(A)(2),

## Sentencing Hearing - Marciano Olivo-Rosa

1 and the guideline sentence is a minimum term of  
2 imprisonment required by statute; that is, 84 months,  
3 with a fine range of up to 250,000 and a supervised  
4 release term of not more than five [5] years. The  
5 term of imprisonment as to Count 4 must be imposed  
6 consecutively to other counts of the conviction.

7 So, to recapitulate, the defendant is  
8 looking at 97 to 121 -- a potential sentence of 97 to  
9 121 under the guidelines but up to 240 pursuant to  
10 law. And there is a mandatory 84 months consecutive  
11 sentence which must be added to whatever the Court  
12 deems reasonable in this case. And the defendant  
13 accepted in the plea agreement that his range would  
14 be between 15 to 17 pursuant to the guidelines, but  
15 15 to 20 pursuant to the law; is that correct?

16 MR. CHICO-LUNA: Yes, Your Honor.

17 THE COURT: All right. The Court has  
18 reviewed the advisory guideline calculations and  
19 finds that the presentence investigation report has  
20 adequately applied the computations. The guideline  
21 computation satisfactorily reflects the components of  
22 this offense by considering its nature and  
23 circumstance. Furthermore, the Court has considered  
24 other sentencing factors set forth at Title 18,  
25 U.S.C., Section 3553(a).



## Sentencing Hearing - Marciano Olivo-Rosa

1           As indicated in the presentence report,  
2       Mr. Olivo-Rosa is a 28-year-old citizen and resident  
3       of Cataño, Puerto Rico who has two minor dependents.  
4       The defendant has a high school diploma and was  
5       employed at the time of the instant arrest.  
6       Mr. Olivo does not suffer from physical or emotional  
7       health problems. He denied the use of illegal drugs  
8       and yielded negative results to all drugs on both  
9       urinalyses taken at the time of his arrest.

10           This is Mr. Olivo-Rosa's first federal  
11       conviction. He was charged with robbery and weapons  
12       violation in the Bayamón and Cayey state superior  
13       courts; however, those cases were dismissed as the  
14       circumstances in both cases were the same as those in  
15       the federal case.

16           Lastly, the Court has taken into  
17       consideration the elements of the offense,  
18       Mr. Olivo's participation in the same. The Court has  
19       taken into consideration all of Title 18, U.S.C.,  
20       3553 factors, the elements of the offense, and the  
21       need to promote respect for the law and protect the  
22       public from further crimes by the defendant, as well  
23       as addresses the issue of deterrence and punishment.  
24       Further, the Court has taken into consideration the  
25       defendant's propensity to commit this type of crime,

## Sentencing Hearing - Marciano Olivo-Rosa

1 his use of firearms, and violence.

2 The Court deems that the sentence in this  
3 case should be off the guideline sentence. Why? The  
4 Court deems that after the Court was generous with  
5 him, removed the monitoring device, had prior thereto  
6 granted him bail, he committed three additional  
7 crimes. On separate dates, not on the same date.  
8 So, considering all those factors, it is the judgment  
9 of the Court that Mr. Marciano Olivo-Rosa is hereby  
10 committed to the custody of the Bureau of Prisons to  
11 be imprisoned for a term of 132 months as to Count 1  
12 in Criminal 12-626; and as Counts 1, 3, and 5 in  
13 Criminal 13-095, to be served concurrently with each  
14 other followed by a consecutive imprisonment term of  
15 84 months in 13-095 for a term of 260 months; that  
16 is, 18 years.

17 Upon release from confinement, the defendant  
18 shall be placed on supervised release for a term of  
19 three [3] years as to Count 1 in Criminal 12-626 and  
20 Counts 1, 3 and 5 in Criminal No. 13-095, and  
21 five [5] years as to Count 4 in Criminal 13-095 to be  
22 served concurrently with each other pursuant to Title  
23 18, U.S.C., Section 3624(e) under the following terms  
24 and conditions:

25 Sir, so you're going to -- the Court has

## Sentencing Hearing - Marciano Olivo-Rosa

1 imposed a concurrent sentence as to the supervised  
2 release. So, because it is concurrent, the higher  
3 one is five [5] years of supervised release.

4 The defendant shall not commit another --  
5 and these are your conditions: The defendant shall  
6 not commit another federal, state, or local crime and  
7 shall observe the standard conditions of supervised  
8 release, recommended by the United States Sentencing  
9 Commission and adopted by this Court.

10 The defendant shall not unlawfully possess  
11 controlled substances.

12 The defendant shall refrain from possessing  
13 firearms, destructive devices, and other dangerous  
14 weapons.

15 The defendant shall participate in a  
16 transitional support services under the guidelines  
17 and supervision of the U.S. probation officer.

18 The defendant shall remain in the services  
19 until satisfactorily discharged by the service  
20 provider and/or with the approval of the U.S.  
21 probation officer.

22 The defendant shall refrain from the  
23 unlawful use of a controlled substance and submit to  
24 a drug test within 15 days of release. Thereafter,  
25 submit to random drug testing no less than three

## Sentencing Hearing - Marciano Olivo-Rosa

1 samples during the supervise period and not to exceed  
2 104 samples per year in accordance with the drug  
3 aftercare program policy of the U.S. Probation Office  
4 approved by this Court. If any such samples detect  
5 substance abuse, the defendant shall participate in  
6 an in-patient or outpatient substance abuse treatment  
7 program for evaluation and/or treatment as arranged  
8 by the U.S. probation officer until duly discharged.

9 The defendant is required to contribute to  
10 the costs of service rendered co-payment in an amount  
11 arranged by the U.S. probation officer based on the  
12 ability to pay or the availability of third-party  
13 payment.

14 The defendant shall participate in a  
15 substance abuse treatment program arranged and  
16 approved by the U.S. probation officer until duly  
17 discharged by authorized program personnel with the  
18 approval of the United States Probation Office, and  
19 submit to urinalysis whenever required to do so by  
20 the treatment program or the U.S. probation officer.

21 The defendant shall provide the U.S.  
22 probation officer access to any financial information  
23 upon request.

24 The defendant shall participate in  
25 vocational training and/or a job placement program

## Sentencing Hearing - Marciano Olivo-Rosa

1 recommended by the U.S. probation officer.

2 The defendant shall submit to a search of  
3 his person, property, house, residence, vehicle,  
4 papers, computers, and other electronic communication  
5 or data storage device or media and effects to a  
6 search at any time, with or without a warrant, by the  
7 U.S. probation officer and, if necessary, with the  
8 necessary assistance of the law enforcement officer  
9 in the lawful discharge of the supervisory functions  
10 of the officer with reasonable suspicion concerning  
11 unlawful conduct or a violation of the condition of  
12 probation or supervised release.

13 The probation officer may seize any  
14 electronic device which will be subject to further  
15 forensic investigation and analysis. Failure to  
16 submit to a search and seizure may be grounds for  
17 revocation.

18 The defendant shall warn any other residents  
19 or occupants that his premises may be subject to  
20 search and seizure.

21 Anna, I don't have the Riley instruction.

22 THE COURTROOM DEPUTY: (Hanging.)

23 THE COURT: In consideration of the Supreme  
24 Court's ruling in *Riley versus California* the Court  
25 will order that any search of the defendant's home by

## Sentencing Hearing - Marciano Olivo-Rosa

1 probation, while the defendant is on supervised  
2 release, be performed only if there's a reasonable  
3 articular suspicion that a specific phone owned or  
4 used by the defendant contains evidence of a crime or  
5 a violation of release condition while used in  
6 furtherance of the crime or was specifically used  
7 during the actual commission of the crime.

8 Now I'm going to stop. Sir, to perform a  
9 recapitulation of your important critical conditions:  
10 No more crimes. No more weapons. And, sir, you are  
11 subject to a search based upon reasonable suspicion  
12 that you may be either committing, about to commit a  
13 crime, or that you are engaged in a crime and,  
14 therefore, they can, with reasonable suspicion,  
15 search your house, your workplace, and all of your  
16 cars. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. All right.

19 The defendant shall cooperate in the  
20 collection of a DNA sample as directed by the U.S.  
21 probation officer pursuant to the revised DNA  
22 collection requirements and Title 18, United States  
23 Code, Section 3563(a)(9).

24 Having considered Mr. Olivo-Rosa's  
25 condition, a fine is not imposed. A special monetary

## Sentencing Hearing - Marciano Olivo-Rosa

1 assessment in the amount of \$100 per count is  
2 imposed, as required by law, for a total of \$500.

3 Has that been paid?

4 MR. CHICO-LUNA: No, Your Honor.

5 THE COURT: Okay. What is your request?

6 MR. CHICO-LUNA: That he'll pay it once he's  
7 on supervised release, Your Honor. He can make a  
8 payment.

9 THE COURT: Well, I think he ought to work  
10 while he is serving.

11 MR. CHICO-LUNA: True, Your Honor. I  
12 believe he should work and he should get vocational  
13 training if available.

14 THE COURT: And vocational training. Get  
15 him away from weapons.

16 The critical problem in this case was that  
17 the Court was convinced, at his request, that we  
18 ought to take his monitoring device off. And right  
19 there after, he commits three crimes which have made  
20 his case more serious than he expected; because he  
21 asks the United States probation officer that his  
22 monitoring device ought to be taken away because he  
23 asks that he was having problems to stay in  
24 employment. As a consequence of the monitoring  
25 device being taken away, he commits three more crimes

## Sentencing Hearing - Marciano Olivo-Rosa

1 with a weapon. That has been the determining factor  
2 in this case. Perhaps we shouldn't have granted him  
3 that request.

4 Sir, you can appeal your conviction if you  
5 believe that your guilty plea was somehow unlawful or  
6 involuntary, or if there is some other fundamental  
7 defect in the proceedings that was not waived by your  
8 guilty plea. You also have a statutory right to  
9 appeal your sentence under certain circumstances  
10 particularly if you think that the sentence contrary  
11 to the law. With few exceptions, any notice of  
12 appeal must be filed within 14 days of judgment being  
13 entered in your case.

14 Let me review that with you. When the plea  
15 was taken in these two cases, one of the conditions  
16 of the plea was that you could not, in any way, later  
17 question your plea agreement as far as convictions  
18 was concerned. That is, that after you pled you  
19 could not in any way attempt to get away from your  
20 acceptance of responsibility in all four of those  
21 crimes.

22 Then, as part of the plea agreement, you  
23 accepted that the Court had discretion to sentence  
24 you between 15 to 20 years. The Court has chosen  
25 18 years partly because of what happened related to



## Sentencing Hearing - Marciano Olivo-Rosa

1 the crimes that you committed after the monitoring  
2 device was taken from you. That is, it was removed  
3 from your presence, which caused the crimes.

4 So, is this sentence illegal? No, it is  
5 not; 84 is a mandatory minimum as to the weapon, and  
6 120 is a statutory; and 20 years, 240, would have  
7 been a statutory maximum. The Court did not go to  
8 the statutory maximum -- not the statutory maximum,  
9 excuse me -- was the maximum of the plea agreement;  
10 because the statutory maximum was life, as the United  
11 States advised you. So, the Court understands that  
12 the sentence is within the discretion of the Court.

13 Sir, with few exceptions, again, any notice  
14 of appeal must be filed within 14 days of judgment  
15 being entered in your case. If you're unable to pay  
16 the cost of an appeal, you may apply for leave to  
17 appeal in forma pauperis. If so request, the clerk  
18 of the Court will prepare and file a notice of appeal  
19 on your behalf.

20 The Court recommends that this defendant be  
21 authorized to take as many vocational treatment as he  
22 likes and he prefers. And, second, that you work  
23 during that time. Don't stay in the prison looking  
24 at the four walls of the prison, get an education.

25 The Court directs that the transcript of the

## Sentencing Hearing - Marciano Olivo-Rosa

1 sentencing proceeding be forwarded to the Sentencing  
2 Commission, United States Bureau of Prisons, as well  
3 as the Probation Office within 30 days.

4 Okay, preference to serve.

5 MR. CHICO-LUNA: Yes, Your Honor. An  
6 institution on or near Columbus, Ohio where his  
7 eldest son is; or, in the alternative, Fort Dix, New  
8 Jersey where his family lives in New York so the  
9 whole family can visit him.

10 THE COURT: What's his first choice?

11 MR. CHICO-LUNA: Columbus, Ohio on or near.

12 THE COURT: The Court recommends that this  
13 defendant be authorized to serve the remaining time  
14 of his sentence in or around northern Ohio where his  
15 oldest son lives, and/or near -- you said Fort Dix?

16 MR. CHICO-LUNA: If not, the alternative is  
17 Fort Dix, New Jersey.

18 THE COURT: The other alternative is Fort  
19 Dix, New Jersey. All right. Okay.

20 The Court directs that the transcript of the  
21 sentencing proceeding be forwarded to the Sentencing  
22 Commission, the United States Bureau of Prisons, as  
23 well as the Probation Office within 30 days.

24 Anything further, counsel for the defense?

25 MR. CHICO-LUNA: From the defense, no, Your

## Sentencing Hearing - Marciano Olivo-Rosa

1 Honor.

2 THE COURT: United States?

3 MR. CANNON: Your Honor, the government  
4 would move to dismiss any remaining counts in either  
5 case at this time.

6 THE COURT: The remaining counts are ordered  
7 dismissed.

8 Anything further from counsel?

9 MR. CHICO-LUNA: No, Your Honor. Permission  
10 to withdraw.

11 THE COURT: You may withdraw. Thank you  
12 very much.

13 (Sentencing Hearing concluded at 11:35 a.m.)

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## Sentencing Hearing - Marciano Olivo-Rosa

1 UNITED STATES DISTRICT COURT )  
2 OF ) ss.  
3 PUERTO RICO )  
4  
5  
6

7 CERTIFICATE  
8  
9

10 I, EVILYS E. CARRIÓN-ESQUILÍN, hereby  
11 certify that the proceedings and evidence are  
12 contained fully and accurately, to the best of my  
13 ability, in the notes recorded stenographically by  
14 me, at the sentencing hearing in the above matter;  
15 and that the foregoing is a true and accurate  
16 transcript of the same.  
17

18 /s/ Evilys E. Carrión-Esquilín

19 EVILYS E. CARRIÓN-ESQUILÍN, RPR  
20 Official Court Reporter  
21 United States District Court  
22 Federal Building, Room 200  
23 San Juan, Puerto Rico 00918  
24 787-772-3377  
25